

United States
Circuit Court of Appeals
For the Ninth Circuit

STATE OF WASHINGTON and EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Appellants,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, Constituting the Board of Supervisors of Maricopa County, Arizona; SIDNEY P. OSBORN, Governor, ANA FROHMILLER, State Auditor, and JIM BRUSH, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; JIM BRUSH, State Treasurer, and ANA FROHMILLER, State Auditor of the State of Arizona,

Appellees.

BRIEF OF APPELLEES APPENDIX NO. 1

Transcript of a Civil Action Filed in the Superior Court of the State of Arizona in and for the County of Maricopa entitled: J. L. GUST, Plaintiff, vs. BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, Constituting the Board of Supervisors of Maricopa County, JIM BRUSH, State Treasurer, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, Constituting the State Loan Commissioners of Arizona, Defendants, being Cause No. 52042 in Division No. 1 of said Court.

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

NOV 26 1943

PAUL P. O'BRIEN,
CLERK

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Appellants,

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**In the Superior Court of Maricopa County
State of Arizona**

Filed Walter S. Wilson, Clerk, 9:27

By G. F. Ellsworth, Deputy Apr. 24, 1943

No. 52042—Div. 1

**COMPLAINT TO RESTRAIN DELIVERY OF
BONDS**

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, JOHN A. FOOTE, ED. OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, JIM BRUSH, State Terasurer, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, Constituting the State Loan Commissioners of Arizona,

Defendants.

Comes now J. L. Gust, the plaintiff, and for cause of action against the defendants alleges as follows:

I.

That plaintiff is a resident and a real and personal property taxpayer of Maricopa County, Arizona, and

as such taxpayer brings this action to restrain the defendants from performing an illegal contract to sell, and putting in circulation and selling to bona fide purchasers for value, negotiable refunding bonds of Maricopa County, without having first determined that the bonds proposed to be refunded are legally subject to retirement.

II.

That defendants, Boettcher and Company, R. E. Moulton and Company, and Bank of America National Trust & Savings Association are dealers in bonds engaged in the business of buying and selling municipal bonds for profit;

That defendants John A. Foote, Ed Oglesby and Phil. Isley, constitute the Board of Supervisors of Maricopa County; defendant Jim Brush is the State Treasurer, defendant Sidney P. Osborn is the Governor, and defendant Ana Frohmiller is the State Auditor of Arizona, and said defendants, Brush, Osborn and Frohmiller constitute the loan commission of Arizona.

III.

That pursuant to Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 31 of the Session Laws, Regular Session, 1917, and acts amendatory thereof and supplementary thereto, the board of supervisors of Maricopa county, on April 10th, 1919, adopted an order calling an election of the property taxpayers of said county to be held May 17th, 1919, to determine whether the bonds of said county in the sum of Four Million (\$4,000.00) Dollars, should be issued and sold for the purpose of constructing and improving

hard surfaced highways in said county, and said resolution specified that the rate of interest of said proposed bonds should be five and one-half ($5\frac{1}{2}\%$) per cent per annum, payable semi-annually, and the terms and dates of maturity of said bonds should be as follows:

“\$100,000.00 thereof to run for a term of 11 years and to mature on June 15, A. D. 1930;

\$100,000.00 thereof to run for a term of 12 years and to mature on June 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 13 years to mature on June 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 14 years and to mature June 15, 1933;

\$100,000.00 thereof to run for a term of 15 years and to mature on June 15, 1934;

\$200,000.00 thereof to run for a term of 16 years and to mature on June 15, 1935;

\$200,000.00 thereof to run for a term of 17 years and to mature on June 15, 1936;

\$200,000.00 thereof to run for a term of 18 years and to mature on June 15, 1937;

\$200,000.00 thereof to run for a term of 19 years and to mature on June 15th, 1938;

\$200,000.00 thereof to run for a term of 20 years and to mature on June 15, 1939;

\$200,000.00 thereof to run for a term of 21 years and to mature on June 15, 1940;

\$200,000.00 thereof to run for a term of 22 years and to mature on June 15, 1941;

\$200,000.00 thereof to run for a term of 23 years and to mature on June 15, 1942;

\$200,000.00 thereof to run for a term of 24 years and to mature on June 15, 1943;

\$200,000.00 thereof to run for a term of 25 years and to mature on June 15, 1944;

\$300,000.00 thereof to run for a term of 26 years and to mature on June 15, 1945;

\$300,000.00 thereof to run for a term of 27 years and to mature June 15, 1946;

\$300,000.00 thereof to run for a term of 28 years and to mature June 15, 1947;

\$300,000.00 thereof to run for a term of 29 years and to mature June 15, 1948;

\$300,000.00 thereof to run for a term of 30 years and to mature June 15, 1949.”

That notice of said election was given by posting and publication as provided by law and that said notice so posted and published was the order for election and contained the description of said bonds as above set forth including the terms and dates of maturity thereof;

IV.

That said bonds were approved by the majority of the property taxpayers of the county at said election, and thereafter, on June 2nd, 1919, the said board of supervisors of said county canvassed the returns of said election and embodied the facts determined upon said canvass in a certificate and filed and recorded the same in the office of the County Recorder of said county, and in said certificate it was declared as follows:

“That the rate of interest upon said proposed bonds is to be five and one-half ($5\frac{1}{2}\%$) per

cent per annum, payable semi-annually and the term and dates of maturity of said bonds to be as follows, to-wit:

\$100,000.00 thereof to run for a term of 11 years and to mature on June 15, A. D. 1930;

\$100,000.00 thereof to run for a term of 12 years and to mature on June 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 13 years to mature on June 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 14 years and to mature on June 15, A. D. 1933;

\$100,000.00 thereof to run for a term of 15 years and to mature on June 15, A. D. 1934;

\$200,000.00 thereof to run for a term of 16 years and to mature on June 15, A. D. 1935;

\$200,000.00 thereof to run for a term of 17 years and to mature on June 15, A. D. 1936;

\$200,000.00 thereof to run for a term of 18 years and to mature on June 15, A. D. 1937;

\$200,000.00 thereof to run for a term of 19 years and to mature on June 15, A. D. 1938;

\$200,000.00 thereof to run for a term of 20 years and to mature on June 15, A. D. 1939;

\$200,000.00 thereof to run for a term of 21 years and to mature on June 15, A. D. 1940;

\$200,000.00 thereof to run for a term of 22 years and to mature on June 15, A. D. 1941;

\$200,000.00 thereof to run for a term of 23 years and to mature on June 15, A. D. 1942;

\$200,000.00 thereof to run for a term of 24 years and to mature on June 15, A. D. 1943;

\$200,000.00 thereof to run for a term of 25 years and to mature on June 15, A. D. 1944;

\$300,000.00 thereof to run for a term of 26 years and to mature June 15, A. D. 1945;

\$300,000.00 thereof to run for a term of 27 years and to mature on June 15, A. D. 1946;

\$300,000.00 thereof to run for a term of 28 years and to mature on June 15, A. D. 1947;

\$300,000.00 thereof to run for a term of 29 years and to mature on June 15, A. D. 1948; and

\$300,000.00 thereof to run for a term of 30 years and to mature on June 15, A. D. 1949."

V.

That thereafter, on June 4th, 1919, the said board of supervisors adopted a resolution preparing and fixing the form of said bonds and in said resolution declared that "The bonds of the county of Maricopa to be issued and sold pursuant to the county road bond election held May 17, 1919, in the total amount of Four Million (\$4,000,000.00) Dollars, shall be of the denomination of One Thousand (\$1,000.00) Dollars each; shall be Four Thousand (4,000) in number, shall be numbered from one (1) to four thousand (4,000) inclusive; shall be each dated June 15, 1919; shall each bear interest from date thereof at the rate of five and one-half (5½%) per cent per annum, payable semi-annually on the 15th day of June and December of each year at the office of the County Treasurer of said county of Maricopa; and shall mature upon the respective dates specified in the resolution of the board of supervisors dated April 10, 1919, calling the aforesaid election, and on the ballots used by the electors at said election and in the certificate of the board of supervisors heretofore and on June 2, 1919, filed in the office of the county recorder of said Maricopa county; and shall each and all strictly conform in their tenor and terms to the aforesaid resolution calling said road

bond election.” That the form of bond thereafter set forth in said resolution is attached hereto, marked “Exhibit A” and made a part hereof.

That said resolution further provided “that each of said series of four thousand bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Twenty-seven and 50/100 (\$27.50) Dollars, each, and payable on the 15th day of June and the 15th day of December of each year during the term of said bond as shall be sufficient to evidence all the interest to become due on said bond during the term thereof, and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit:

The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Twenty-seven and 50/100 (\$27.50) Dollars, in gold coin of the United States, the semi-annual interest on its highway bond numbered

Election of May 17, 1919.

W. K. BOWEN,
Chairman, Board of Supervisors
Maricopa County, State of
Arizona.

Attest:

Clarence L. Standage
Clerk, Board of Supervisors
Maricopa County, Arizona.

Coupon No.”

VI.

That no recital in said bonds or coupons nor any statement therein contained, gave any indication

whatsoever that said bonds or any of them were subject to call for redemption before their maturity dates, nor did any recital or statement in said bonds or coupons call attention to any statute, law, practice or custom, providing for the call of said bonds for redemption before their respective due dates, and no such statutes, law, practice or custom, ever existed or was suggested in the state of Arizona prior to the attempt to call such bonds for redemption in the year 1942.

VII.

That thereafter said board of supervisors caused to be published a notice inviting proposals for the purchase of said bonds, and said notice contained the following provision:

“Said bonds to be serial bonds, part of which shall mature on the 15th day of June of each year from the year 1930 to the year 1949, both inclusive, as more specifically described in that certificate of the Board of Supervisors relating to said bonds recorded in the office of the County Recorder of Maricopa County on June 2, 1919, in Book 19 of Miscellaneous Records, at page 357.”

That the certificate referred to was so recorded in the county recorder's office and gave the dates of maturity of said bonds as set forth in the order for said bonds hereinabove set forth.

VIII.

That bids for said bonds were received and the bid of Graves, Blanchet and Thornburgh and associates, was accepted. Said bid contained the following provisions:

“For the Four Million Dollars par value legally issued Highway Bonds of Maricopa County, Arizona, complying in all respects with the description of same as contained in your official advertisement of sale, and to be delivered to us on the basis of delayed deliveries as outlined in your Official Notice of Sale, we will pay par and accrued interest to date of deliveries of the bonds, and in addition thereto a premium of Thirty-two Thousand Five Hundred (\$32,500.00) Dollars.”

IX.

That after the said bid was accepted, and on the 9th day of July, 1919, defendant Maricopa County, entered into a formal written contract with the bidders, providing for the sale and purchase of said bonds and that in said contract said Maricopa County expressly covenanted and agreed to sell to the purchasers and the purchasers covenanted and agreed to purchase from said Maricopa County, “the highway bonds of said Maricopa County authorized to be issued by the election held May 17th, 1919, in the amount of \$4,000,000.00 par value; said bonds to comply in all respects with the description of the same as contained in the ‘Notice Inviting Proposals hereinabove set forth’.” That said contract was regularly executed by the Chairman and Clerk of the Board of Supervisors of said Maricopa County by authority of a resolution adopted by said Board of Supervisors on July 9th, 1919.

X.

That after all of said issue of bonds had been executed upon the form set forth in “Exhibit A” hereto attached and the bid of the purchasers therefor had been accepted, and the formal contract for the pur-

chase thereof between said Maricopa county and the purchasers had been executed, and after three thousand of said bonds had been delivered to the purchasers and one thousand of said bonds remained to be delivered to said purchasers the legislature of the state of Arizona adopted Chapter 54 of the Session Laws of 1921, ratifying, approving and validating said bonds and the sale thereof, and in said Act said legislature declared "that the bonds of the County of Maricopa in the sum of Four Million (\$4,000,000.00) Dollars, authorized by the election of the property taxpayers of said county held May 17, 1919, for the purpose of providing funds for the construction and improvement of certain portions of the public highways of Maricopa County and the contract for the sale of such bonds entered into by the board of supervisors of said Maricopa County, with Graves, Blanchett, Thornburgh, and associates, on the 9th day of July, 1919, are hereby ratified, approved and declared valid," and in said Act said legislature further declared that, "all acts and parts of acts in conflict with the provisions of this act are hereby repealed."

XI.

That after the ratification of said bonds by said Chapter 54 of the Session Laws of 1921, they were sold on the open market, and thereafter various purchasers, in reliance upon the proceedings of said board of supervisors hereinabove set forth, and the maturity dates of said bonds as set forth in said proceedings, and said bonds, and the covenants of said Maricopa County to pay interest on said bonds to the maturity dates thereof as provided in said bonds, and the above mentioned act of the legislature of the state of Arizona, ratifying and approving said

bonds in the form authorized as above set forth, and the contract and agreement entered into by said Maricopa county and the original purchasers of said bonds, and the various acts of the legislature of the former territory and the state of Arizona, construing the statutes, and declaring the policy of the state of Arizona, and the acts of the public officials of the state of Arizona and Maricopa county, construing Chapter 2 of Title 52, Revised Statutes of 1913, various purchasers, including trust companies, insurance companies, private citizens, and also the State Treasurer of Arizona for the trust funds created by the Enabling Act, and the Industrial Commission of the State of Arizona, and public authorities of other states, purchased bonds of said issue and paid a large premium for the right to collect interest on said bonds at the rate therein specified, until the respective maturity dates specified in said bonds.

XII.

That pursuant to said Chapter 31 of the Session Laws of 1917 and amendments thereto the board of supervisors of defendant Maricopa county, on November 30, 1920, adopted an order calling an election of the property taxpayers of said county to be held December 31, 1920, to determine whether the bonds of said county in the additional sum of \$4,500,000.00 should be issued and sold for the purpose of constructing and improving hard surfaced highways in said county, and said resolution specified that the rate of interest of said proposed bonds should be 6% per annum, payable semi-annually, and the terms and dates of maturity of said bonds should be as follows:

\$100,000.00 thereof to run for a term of 10 years and to mature on January 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 11 years and to mature on January 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 12 years and to mature on January 15, A. D. 1933;

\$100,000.00 thereof to run for a term of 13 years and to mature January 15, 1934;

\$100,000.00 thereof to run for a term of 14 years and to mature January 15, 1935;

\$200,000.00 thereof to run for a term of 15 years and to mature on January 15, 1936;

\$200,000.00 thereof to run for a term of 16 years and to mature on January 15, 1937;

\$200,000.00 thereof to run for a term of 17 years and to mature on January 15, 1938;

\$200,000.00 thereof to run for a term of 18 years and to mature on January 15, 1939;

\$200,000.00 thereof to run for a term of 19 years and to mature on January 15, 1940;

\$200,000.00 thereof to run for a term of 20 years and to mature on January 15, 1941;

\$200,000.00 thereof to run for a term of 21 years and to mature on January 15, 1942;

\$200,000.00 thereof to run for a term of 22 years and to mature on January 15, 1943;

\$200,000.00 thereof to run for a term of 23 years and to mature on January 15, 1944;

\$200,000.00 thereof to run for a term of 24 years and to mature on January 15, 1945;

\$300,000.00 thereof to run for a term of 25 years and to mature January 15, 1946;

\$300,000.00 thereof to run for a term of 26 years and to mature January 15, 1947;

\$300,000.00 thereof to run for a term of 27 years and to mature January 15, 1948;

\$300,000.00 thereof to run for a term of 28 years and to mature January 15, 1949;

\$300,000.00 thereof to run for a term of 29 years and to mature January 15, 1950; and

\$500,000.00 thereof to run for a term of 30 years and to mature January 15, 1951.

That notice of said election was given by posting and publication as provided by law and that said notice so posted and published was the order for election and contained the description of said bonds as above set forth, including the terms and dates of maturity thereof.

XIII.

That said bonds were approved by the majority of the property taxpayers of the county at said election and thereafter, on January 20, 1921, the said board of supervisors of said county canvassed the returns of said election and declared said bond issue to have been approved by said taxpayers and thereafter, on November 2, 1921, said board of supervisors embodied the facts determined from said canvass in a certificate and filed and recorded the same in the office of the county recorder of said county, and in said certificate it was declared as follows:

“The rate of interest upon the said proposed bonds shall be six percentum (6%) per annum, payable semi-annually and the terms and dates of maturity of said bonds shall be as follows, to-wit:

\$100,000.00 thereof to run for a term of 10 years and to mature on January 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 11 years and to mature on January 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 12 years and to mature on January 15, A. D. 1933;

\$100,000.00 thereof to run for a term of 13 years and to mature on January 15, 1934;

\$100,000.00 thereof to run for a term of 14 years and to mature January 15, 1935;

\$200,000.00 thereof to run for a term of 15 years and to mature on January 15, 1936;

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\$200,000.00 thereof to run for a term of 18 years and to mature on January 15, 1939;

\$200,000.00 thereof to run for a term of 19 years and to mature on January 15, 1940;

\$200,000.00 thereof to run for a term of 20 years and to mature on January 15, 1941;

\$200,000.00 thereof to run for a term of 21 years and to mature on January 15, 1942;

\$200,000.00 thereof to run for a term of 22 years and to mature on January 15, 1942;

\$200,000.00 thereof to run for a term of 23 years and to mature on January 15, 1944;

\$200,000.00 thereof to run for a term of 24 years and to mature on January 15, 1945;

\$300,000.00 thereof to run for a term of 25 years and to mature on January 15, 1946;

\$300,000.00 thereof to run for a term of 26 years and to mature January 15, 1947;

\$300,000.00 thereof to run for a term of 27 years and to mature January 15, 1948;

\$300,000.00 thereof to run for a term of 28 years and to mature January 15, 1949;

\$300,000.00 thereof to run for a term of 29 years and to mature January 15, 1950; and

\$500,000.00 thereof to run for a term of 30 years and to mature January 15, 1951."

XIV.

That thereafter, on the 2nd day of November, 1921, the said board of supervisors adopted a resolution preparing and fixing the form of said bonds and in said resolution declared that:

"The bonds of the County of Maricopa to be issued and sold pursuant to the County Road Bond Election held December 31, 1920, in the total amount of Four Million Five Hundred Thousand (\$4,500,000.00) Dollars, shall be in the denomination of One Thousand (\$1,000.00) Dollars each, shall be four thousand five hundred (4,500) in number, shall be numbered from 4,001 to 8,500, inclusive, shall each be dated January 15, 1921, shall each bear interest from the date thereof at the rate of 6% per annum, payable semi-annually, on the 15th day of January and July in each year at the office of the County Treasurer of the said County of Maricopa, State of Arizona, and shall mature upon the respective dates specified in the resolution of the Board of Supervisors, dated the 16th day of August, calling for the aforesaid election, and on the ballots for the electors in the said election and in the certificate of the Board of Supervisors heretofore on the 8th day of November, 1921, filed in the office of the County Recorder of Maricopa County, and each and all shall strictly conform in tenor and terms to the aforesaid resolution calling said Road Bond Election, the ballots used by the electors at said election, and the aforesaid certificate of the Board of Supervisors recorded on November 8, 1921."

That the form of bond thereafter set forth in said Resolution is attached hereto, marked "Exhibit B", and made a part hereof.

That said resolution further provided, "That each of said series of 4,500 bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Thirty (\$30.00) Dollars each and payable on the 15th day of January and the 15th day of July of each year during the term of said bond as shall be sufficient to evidence all the interest to become due on said bond during the term thereof and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit: (except changes as to dates of payments) 'The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of January, 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Thirty (\$30.00) Dollars in gold coin of the United States for the semi-annual interest on its highway bond No.....

Election of December 31, 1920.

Chairman, Board of Supervisors of
Maricopa County, State of Arizona.

Attest:

Clerk, Board of Supervisors,
Maricopa County, State of
Arizona.

Coupon No.....' ''.

XV.

That no recital in said bonds or coupons or any statement therein contained gave any indication whatsoever that said bonds or any of them were subject to call for redemption before their maturity dates nor did any recital or statement in said bonds or coupons call attention to any statute, law, practice or custom providing for the call of said bonds for redemption before their respective due dates and no such statute, law, practice or custom ever existed or was suggested in the state of Arizona prior to the attempt to call such bonds for redemption in the year 1942.

XVI.

That thereafter said board of supervisors caused to be published a notice inviting proposals for the purchase of said bonds and said notice contained the following provision:

“Said bonds to be serial bonds, part of which will mature on the 15th day of January of each year from the year 1931, to the year 1951, both inclusive, as more specifically prescribed in that certificate of the Board of Supervisors relating to the said bonds, recorded in the office of the county recorder of said Maricopa County on November 8, 1921, in Book 24, page 345 of Miscellaneous Records;”

That the certificate referred to was so recorded in the county recorder's office and gave the dates of the maturity of said bonds as set forth in the order for said bonds hereinbefore set forth.

XVII.

That bids for said bonds were received and the bid of Harris Trust & Savings Bank, William R.

Compton Company, Northern Trust Company, Union Trust Company, and Bankers Trust Company, of Denver, was accepted. Said bid was made for the bonds containing the terms of the bonds as set forth in the form attached hereto, marked "Exhibit B", and for the maturities set forth in the proceedings of said board of supervisors for the issuance of said bonds as hereinabove set forth, and the amount of said bid was Four Million Eight Hundred Thousand, One Hundred Fifty (\$4,800,150.00) Dollars, cash, for the four million five hundred thousand (\$4,500,000.00) dollars of bonds.

XVIII.

That after the election of the property taxpayers approving the issuance of said Four Million Five Hundred Thousand (\$4,500,000.00) Dollars of bonds, and after the canvass of the results of said election, and after the determination of the maturities of said bonds as set forth in the order for election, and the call for said election, and as approved by the property taxpayers at said election and prior to the notice inviting proposals for the sale of said bonds, the legislature of the state of Arizona passed chapter 86 of the Session Laws of 1921 ratifying, approving and validating the said bonds as authorized, to be issued and sold by the board of supervisors of said county at an election by the property taxpayers of said county held December 31, 1920, and that in and by said act the legislature of the state of Arizona declared that the said election "was a valid election and conferred upon the board of supervisors of said county the power and authority to issue and sell said bonds and that said bonds when issued and sold by said board of supervisors are hereby declared to be

free from any defect or invalidity by reason of any act or omission of said board of supervisors in calling and holding said election or preparatory thereto"; that said act of the legislature became a law on or about June 14, 1921, and before said bonds were offered for sale.

XIX

That after the ratification of said bonds by said Chapter 86 of the Session Laws of 1921, they were issued in the form approved and ratified by the legislature of Arizona, and were delivered to the said original purchasers thereof and were sold on the open market, and thereafter various purchasers, in reliance upon the proceedings of said board of supervisors hereinabove set forth, and the maturity dates of said bonds as set forth in said proceedings and said bonds, and the covenants of said Maricopa county to pay interest on said bonds to the maturity dates thereof as provided in said bonds, and the above mentioned act of the legislature of the state of Arizona, ratifying and approving said bonds in the form authorized as above set forth, and the various acts of the legislature of the former territory and the state of Arizona construing the statutes and declaring the policy of the state of Arizona, and the acts of the public officials of the state of Arizona, and Maricopa county, construing Chapter 2 of Title 52, Revised Statutes of 1913, various purchasers, including trust companies, insurance companies, private citizens, and also the State Treasurer of Arizona for the trust funds created by the Enabling Act, and the Industrial Commission of the state of Arizona, and public authorities of other states, purchased bonds of said issue and paid a large premium for the right to collect interest on said bonds at the rate therein

specified, until the respective maturity dates specified in said bonds.

XX.

That after the issuance and delivery of said last issue of bonds in the year 1921, defendant, Maricopa County, regularly levied and collected taxes for each of the issues of bonds above set forth and made the semi-annual payments of interest out of the interest fund and retired those bonds that became due and payable on their respective due dates and at no time made any claim or assertion of any right to retire any of said bonds before their due dates until the year 1942; that in the year 1942 the board of supervisors of said Maricopa County adopted a resolution demanding that the State Loan Commissioners of the state of Arizona issue refunding bonds for the purpose of redeeming and refunding all of the bonds of the two issues above mentioned, notwithstanding the fact that said bonds were not yet due and payable and contained no provision for retirement or redemption thereof before their respective due dates; that said loan commissioners of the state of Arizona refused to take any proceedings for such refunding, and, thereupon, the said board of supervisors of Maricopa county, Arizona, brought a mandamus proceeding in the Supreme court of the state of Arizona to compel the state loan commissioners to refund and redeem said bonds under the provisions of Article 4 of Title 10, of Arizona Code, Annotated, 1939, Sections 10-401 to 10-411; that the only party plaintiff to said mandamus proceeding was Maricopa County, and the only parties defendant to said proceeding were Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor and Joe Hunt,

State Treasurer, constituting the loan commissioners of the state of Arizona, and that said plaintiff and said defendants were the only parties to said mandamus suit, and that none of the holders of the bonds of either of the issues above mentioned were parties to said suit, nor were their interests in any way represented in said suit. The Supreme court of Arizona, upon the complaint filed by the plaintiff therein, and the answer thereto filed by the defendants therein, entered its judgment ordering the said loan commissioners to proceed with the refunding of said bonds, and in its opinion stated that said Article 4 of Title 10, Arizona Code Ann. 1939, was applicable to the redemption and refunding of the two issues of bonds above mentioned.

XXI.

That thereafter, the board of supervisors of Maricopa county, again demanded that said loan commissioners proceed with the refunding of said bonds, and said loan commissioners thereupon adopted a resolution calling for bids for bonds to refund the whole remainder of the two issues of bonds above mentioned remaining outstanding. That notice for bids was published, and before the time for receiving bids therein specified, all of the defendants herein were advised that the holders of many of the outstanding bonds proposed to be refunded relied upon the provision in the bonds held by them specifying definite maturity dates, and the covenants of Maricopa county obligating said county to pay the interest on said bonds until their respective due dates, and denied the right of Maricopa county and the loan commissioners of the state of Arizona to call said bonds before their due dates without being given their day in court to determine whether or not said

bonds were callable in violation of the representation to the contrary therein contained, and further denied the power of the Supreme court of the state of Arizona to determine that question, for the reason that said bonds were proposed to be called under the provisions of Article 4 of Chapter 10, Arizona Code Annotated, 1939, which became a law after the issuance of said bonds, and if said article was construed as giving said county or said loan commissioners the power to call said bonds before their due dates, it constituted a law impairing the obligation of the contract between holders of the bonds and said Maricopa county, made when said bonds were issued, and that the determination of that question was vested by the Constitution and laws of the United States in the federal courts, and said defendants were further advised before the time specified for the receipt of said bids that the several bond attorneys who had passed upon previous issues of the bonds of said county would not approve said bonds until said question was determined by the federal courts in a proceeding in which the bondholders were represented, and said defendants were advised by various bond houses and purchasers of municipal bonds, that they would not bid upon said bonds until said question was determined to the satisfaction of said bond attorneys, and that in their opinion, until said question was determined, no bid for the fair market value of said bonds would be received.

XXII.

That on the first day of February, 1943, the date fixed in the Call for Bids, defendants Boettcher and Company, R. E. Moulton and Company, and Bank of America National Trust & Savings Association,

submitted their joint bid for the purchase of said refunding bonds. That the following is a true copy of said bid:

“February 1, 1943.

Loan Commissioners of the
State of Arizona
Phoenix, Arizona

Gentlemen:

For all, but not less than all, of \$4,100,000.00 par value legally issued State of Arizona Refunding Bonds to be dated as of the date of their issuance, to bear interest at the rate of $2\frac{3}{4}$ per cent per annum, payable semi-annually January 15 and July 15, of the denomination of \$1,000.00 each, numbered from 1 to 4100, both inclusive, and maturing \$300,000.00 principal amount on July 15 in each of the years 1944 to 1956, both inclusive, and \$200,000.00 on July 15, 1957, all in accordance with your published notice of sale, we bid you the sum of par and accrued interest to date of delivery, together with a premium of \$800.00. We further agree as part of the purchase price that we will waive interest on the Refunding Bonds from the date of their issue to April 15, 1943, this concession on our part being made for the purpose of enabling you to complete the proceedings for the call and redemption of the outstanding bonds of Maricopa County to the end that double interest will not accrue on both the Refunding Bonds and the outstanding Maricopa County bonds. This bid is subject to the following conditions, each of which is hereby made a condition precedent to any liability on our part.

(1) That this bid shall be accepted promptly, and notice thereof given to us, in no event later than 5:00 o'clock P. M., Pacific War Time, February 10, 1943.

(2) That said Refunding Bonds shall be duly executed and delivered to us on payment of the purchase price therefor not later than 12:00 o'clock Noon, Pacific War Time, March 15, 1942.

(3) That in the event that prior to the delivery of said Refunding Bonds to us the income received by private holders from bonds of the same type and character shall be taxable or subjected to tax or be declared to be taxable by the terms of any Federal Income Tax law either by ruling of the Bureau of Internal Revenue or by decision of any Federal Court or by amendment of the Federal Income Tax laws or otherwise, we may at our election be relieved of our obligations under this agreement to purchase said bonds.

(4) The Loan Commissioners of the State of Arizona and the Board of Supervisors of Maricopa County, State of Arizona, will adopt such proceedings and take such action as may legally be required for the purpose of calling and redeeming the outstanding \$4,100,000.00 principal amount of bonds of the County of Maricopa proposed to be refunded from the proceeds of the issuance and sale of said Refunding Bonds of the State of Arizona and that such outstanding bonds of the County of Maricopa to the amount aforesaid will be called and redeemed from the proceeds of the sale of said Refunding Bonds (which shall be used for no other purpose) and that interest on said bonds of the County of Maricopa will cease from and after the date fixed for such redemption.

(5) That you will furnish us with a full, true and correct transcript of the proceedings for the issuance of said Refunding Bonds duly certified on the basis of which we will be able to secure at our own expense, at or before the delivery of said Refunding Bonds to us, the unqualified legal opinion of Messrs. Orrick, Dahlquist, Neff

& Herrington of San Francisco approving the legality of the proceedings for the issuance of said Refunding Bonds and the proceedings taken or to be taken for the call and redemption of a like principal amount of outstanding bonds of Maricopa County, State of Arizona, in all respects. If our said attorneys are unable to render their opinion approving the legality of said Refunding Bonds and said proceedings for the redemption of said outstanding bonds of Maricopa County in all respects, this bid is to be deemed cancelled and we are to be relieved from all liability hereunder, with like force and effect as thought this bid had not been made.

We hand you herewith cashiers check of the First National Bank of Arizona, which is a member bank of the Federal Reserve System, in the sum of \$205,000.00 payable to the order of the State Treasurer of the State of Arizona, to be held in accordance with your advertised notice of the sale of said bonds, but to be returned to us uncashed in the event you are unable to comply with each and all of the conditions precedent above specified.

Very truly yours,

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIATION.
BOETTCHER AND COMPANY
R. E. MOULTON AND COMPANY

By FRANCES MOULTON."

That said bid was the only bid received. That the price stated in said bid is substantially par for bonds bearing $2\frac{3}{4}\%$ interest per annum. That said price was fixed by the bidders with the knowledge that there probably would be no competition in said bidding because of the questioned validity of said bonds, and was at least one-half per cent interest per annum

higher than would have been bid on the market for said bonds if the validity thereof had been properly established. Various other bonding houses and purchasers of municipal bonds would have bid for said bonds and the interest rate would have been at least as low as $2\frac{1}{4}\%$ per annum, if it had been determined prior to said bidding that the bonds proposed to be refunded were redeemable under the constitution of the United States, and that Messrs. Orrick, Dahlquist, Neff & Herirngton of San Francisco, California, who were named in said bid as the attorneys to approve the legal validity of the bonds for said bidders, knew before said bid was submitted that they would not approve said bonds without further proceeding in court, and that said bid offering to purchase said bonds subject to the approval of said attorneys was not made in good faith, but was made with the reservation that said bonds would not be approved and said purchase completed on said bid as made, but that if the said bid was found to be the best bid said bonds would be disapproved until further proceedings to clarify the validity of said bonds and the procedure required for the calling of the bonds to be refunded were had.

XXIII.

That in pursuance of said plan of the said bidders, on February 10, 1943, the last day on which said bid could be accepted according to its terms, said loan commissioners, at the instance of the board of supervisors of Maricopa County, adopted a resolution, of which the following is a copy:

“RESOLUTION OF THE LOAN COMMISSIONERS OF THE STATE OF ARIZONA SELLING \$4,100,000 PRIN-

CIPAL AMOUNT OF REFUNDING BONDS TO BE ISSUED FOR THE PURPOSE OF REDEEMING A LIKE PRINCIPAL AMOUNT OF BONDS OF MARICOPA COUNTY, ARIZONA; PROVIDING FOR THE REDEMPTION OF OUTSTANDING BONDS OF MARICOPA COUNTY, AGGREGATING THE PRINCIPAL AMOUNT OF \$4,100,000; SETTING ASIDE THE PROCEEDS OF THE SALE OF STATE OF ARIZONA REFUNDING BONDS FOR THE PURPOSE OF REDEEMING SAID BONDS OF MARICOPA COUNTY AND DIRECTING NOTICE OF SUCH REDEMPTION TO BE GIVEN.

WHEREAS, the Loan Commissioners of the State of Arizona, heretofore, to-wit, on November 19, 1942, authorized the issuance of \$4,100,000 principal amount of State of Arizona Refunding Bonds and directed notice of sale thereof to be given; and

WHEREAS, such notice of the sale of said Refunding Bonds has been duly given and published and at the time and place fixed for the receipt of bids, the Loan Commissioners duly met to consider all bids received for the purchase of said bonds and to take such action thereon as might be deemed advisable; and

WHEREAS, Bank of America National Trust & Savings Association, Boettcher and Company, and R. H. Moulton and Company, duly filed their bid for the purchase of said bonds at the price of par and a premium accompanied by a cashier's check on the First National Bank of Arizona, which is a member bank of the Federal Reserve System, payable to the Treas-

urer of the State of Arizona in the sum of \$205,000; and

WHEREAS, said bid for the purchase of said bonds and the bidders' good faith check accompanying the same are satisfactory and in accordance with law and the Board of Supervisors of Maricopa County has, by resolution determined that said bid is satisfactory and should be accepted; and

WHEREAS, it appears that said bid should be accepted and said bonds awarded as in this resolution provided;

NOW, THEREFORE BE IT RESOLVED by the Loan Commisisoners of the State of Arizona, as follows:

Section 1. Refunding Bonds of the State of Arizona in the aggregate principal amount of \$4,100,000 are hereby awarded and sold to Bank of America National Trust & Savings Association, Boettcher and Company, and R. H. Moulton and Company in accordance with and subject to the terms and conditions of their said bid as follows, to-wit:

(Here is inserted copy of bid)

Section 2. This award and the sale of said Refunding Bonds is made subject to the following conditions to which said successful bidders have consented and agreed, to-wit:

The Loan Commissioners shall have the right to deliver said Refunding Bonds to said bidders subsequent to March 15, 1943, if it proves to be impracticable to print, lithograph or execute said bonds prior to said date, or to make delivery thereof prior to said date by reason of litigation or any other cause whatsoever, and any delivery of said bonds made subsequent to said date shall constitute good delivery thereof in accordance with said notice of sale, provided all

other terms and conditions of said bid shall have been duly complied with.

Said purchasers shall have the right upon five days written notice to the Loan Commissioners to terminate said extended period of delivery and require that delivery of said bonds be made to them not later than five days from the date of said notice. If such delivery of said bonds is not so made to said purchasers by the State Treasurer or the Loan Commissioners within the said period of five days from the date of said notice, this sale shall be deemed cancelled and both the Loan Commissioners and said purchasers shall be relieved of all obligations one to the other. The Loan Commissioners shall be under no liability for damages for failure to deliver said bonds to said purchasers in the event of cancellation of this sale nor shall said purchasers be under any liability to the Loan Commissioners or the State of Arizona. In the event of such cancellation of this sale the good faith check of \$205,000 deposited by said bidders shall be promptly returned to said bidders.

Section 3. Forthwith upon the payment into the state treasury of the proceeds of the sale of said \$4,100,000 principal amount of State of Arizona Refunding Bonds, the state treasurer shall apportion them to a special fund which is hereby designated the 'Maricopa Highway Bond Redemption Fund'. Out of the moneys in said Maricopa County Highway Bond Redemption Fund the state treasurer shall pay a like principal amount of \$4,100,000 of bonds of Maricopa County designated and referred to in the resolution of the Loan Commissioners adopted November 19, 1942, which is hereby referred to and by reference incorporated herein and made a part hereof.

Section 4. The Board of Supervisors of Maricopa County and the county treasurer

thereof shall cause to be deposited with the state treasurer in a special fund which is hereby designated the 'Maricopa County Highway Bond Interest Fund,' the amounts necessary to pay interest on the bonds of Maricopa County called for redemption, from the last interest payment date to the date of redemption. The moneys in said Maricopa County Highway Bond Interest Fund shall be used and applied by the state treasurer for the payment of interest from the last ensuing interest payment date to the date of redemption of said Maricopa County Bonds.

Section 5. Forthwith upon the deposit of said proceeds of sale of said State of Arizona Refunding Bonds in said Maricopa County Highway Bond Redemption Fund and said interest moneys in said Maricopa County Highway Bond Interest Fund, it is hereby found and determined that there will be in the state treasury of the State of Arizona a sum sufficient for the redeeming of said outstanding bonds of Maricopa County, State of Arizona, for the redemption of which said State of Arizona refunding bonds are authorized to be issued.

Section 6. Upon the deposit of the funds as provided in Section 5 hereof, the state treasurer of the State of Arizona is hereby authorized and directed to call for redemption and to redeem all of the outstanding bonds of Maricopa County more particularly described in the Notice of Redemption hereinafter set forth. The state treasurer shall cause notice of such call for redemption to be published at least two (2) consecutive times in the 'Arizona Weekly Gazette,' a newspaper published in the City of Phoenix, the state capital of the State of Arizona, and in addition thereto said state treasurer shall cause said notice to be published once a week for one (1) month in three (3) newspapers published in the State of Arizona (no two of which shall be published in the same county), and such notice

shall be published in the 'Chandler Arizonan,' a newspaper published and circulated in the County of Maricopa, State of Arizona, and in the 'Nogales International', a newspaper published and circulated in the County of Santa Cruz, State of Arizona, and in the 'Casa Grande Dispatch,' a newspaper published and circulated in the County of Pinal, State of Arizona. In addition to such publications in the State of Arizona, which are hereby declared to be sufficient and to constitute adequate public notice of such call for redemption, the state treasurer is hereby authorized to cause such Notice of Redemption to be published once in 'The Bond Buyer,' a publication in the City and State of New York and of general circulation throughout the United States of America among dealers in municipal bonds and institutions and individual investors holding municipal bonds, and, also, to cause such Notice of Redemption to be published once in the 'Wall Street Journal, Pacific Coast Edition,' a newspaper published in the City and County of San Francisco, State of California, and of general circulation throughout the Pacific Coast of the United States among municipal bond dealers, investors and institutional holders of municipal bonds; but no error or informality in such publication in said newspapers published in New York and San Francisco, respectively, or failure of publication in either or both thereof shall affect the validity of such call for redemption, provided that notice thereof be published in said newspapers in the State of Arizona for the periods above specified. Said State Treasurer is further authorized to cause a copy of such advertised Notice of Redemption to be mailed to Bankers Trust Company of the City of New York, State of New York, and to each bank or trust company or paying agent at which the interest on said bonds of Maricopa County hereby called for redemption was made payable.

Section 7. Said notice of call for redemption shall be substantially in the following form:

**NOTICE OF REDEMPTION
MARICOPA COUNTY, STATE OF ARIZONA
HIGHWAY BONDS**

NOTICE IS HEREBY GIVEN, that pursuant to law and the proceedings of the Board of Supervisors of Maricopa County and the Loan Commissioners of the State of Arizona, all of the following described bonds of Maricopa County, State of Arizona are hereby called for redemption and will be paid on.....1943, to-wit:

Name of Bond	Date of Issue	Bond Numbers (All inclusive)
Maricopa County Highway Bonds	June 15, 1919	2301 to 4000
Maricopa County Highway Bonds	Jan. 15, 1921	6101 to 8500

Said bonds will be redeemed at the face amount thereof and accrued interest thereon to and including, 1943. Said bonds hereby called for redemption must be surrendered on said redemption date (with all interest coupons maturing subsequent to said redemption date) at the office of the state treasurer of the State of Arizona, Capitol Building, Phoenix, Arizona, for payment and cancellation. If any of said bonds hereinabove numbered and described are not presented for payment and cancellation thirty (30) days after the first publication of this notice, to-wit, on or before, 1943, interest on all such bonds will cease from and after said date.

This notice is given pursuant to proceedings of the Loan Commissioners of the State of Arizona and the concurrent action of the Board of

Supervisors of Maricopa County, State of Arizona, adopting and ratifying the same.

Dated, Phoenix, Arizona,, 1943.

State Treasurer of the State of Arizona

County Treasurer of Maricopa County,
State of Arizona.

Section 8. If the state treasurer has knowledge of the names and addresses of the holders of any of said bonds hereby called for redemption, said state treasurer is further authorized and directed to deposit in the United States Post Office at Phoenix, Arizona, a copy of the foregoing notice of call for redemption, enclosed in a sealed envelope with postage thereon prepaid, addressed respectively to such owner or owners whose names and addresses are known to said state treasurer, each of which notices shall be mailed, as above provided, by depositing the same in the United States Post Office at least thirty (30) days prior to said last mentioned redemption date.

Section 9. Whenever such outstanding bonds of Maricopa County hereby called for redemption are presented for payment, the state auditor shall endorse on each bond the amount due thereon and shall write across the face of each bond the date of its surrender and the name of the person surrendering the same and shall keep proper record thereof, and when the state treasurer pays any of said bonds of Maricopa County so called for redemption, he shall cancel such bonds by perforating the same and indorsing thereon by writing or stamping in ink the words 'Redeemed and Cancelled,' with the date of cancellation, and shall thereupon cause said bonds so cancelled to be delivered to the county treas-

urer of Maricopa County, who shall give his receipt therefor, and such receipt shall be full acquittance to the state treasurer and the state auditor of the State of Arizona for the application of the moneys in the Redemption Fund hereinabove specified, used and applied for the purpose of redeeming said bonds of Maricopa County.

Section 10. This resolution shall take effect immediately.

PASSED AND ADOPTED by the Loan Commissioners of the State of Arizona, on this 10th day of February, 1943.

SIDNEY P. OSBORN,
Governor.

ANA FROHMILLER,
State Auditor.

JOE HUNT,
State Treasurer.

LOAN COMMISSIONERS OF THE
STATE OF ARIZONA.”

XXIV.

That the aforesaid resolution of said loan commissioners of the state of Arizona is wholly beyond the power of said loan commissioners, and illegal and void, for the reason that Section 10-404, Arizona Code, Annotated, 1939, prescribes the power of said loan commissioners with respect to accepting said bids and awarding contracts thereon, as follows:

“At the place and time named in said notice, the loan commissioners shall open all bids received by the treasurer and shall award the purchase of said bonds, or any part thereof, to the best bidder therefor. The loan commissioners

may reject any and all bids and may refuse to make any award unless sufficient security be furnished by the bidder for complying with his bid."

That the said resolution of the loan commissioners in fact grants an option to the said bidder of indefinite duration, for it provides no time for the delivery of said bonds and provides that the obligation upon the bidder to take and pay for said bonds may be terminated at any time upon five days' notice, unless delivered within said five days, and when delivered, all other terms and conditions of said bid must be complied with, and one of the conditions is the approving opinion of Messrs. Orrick, Dahlquist, Neff & Herrington, who are the attorneys for the bidders, and are under obligation only to the bidders, and owe no duty to the loan commission of the state of Arizona, or to Maricopa county.

XXV.

That after the said resolution was adopted, Maricopa county, under the direction of said Messrs. Orrick, Dahlquist, Neff & Herrington, brought a further mandamus proceeding against Sidney P. Osborn, Jim Brush and Ana Frohmiller constituting the loan commissioners of the state of Arizona, to require said loan commissioners to proceed with the refunding of said bonds. That Maricopa county was the only plaintiff in said proceedings, and the said loan commissioners were the only defendants, and that none of the holders of the bonds to be redeemed by said refunding issue were made parties to said proceeding, and that the bidders for said bonds were not parties to said proceedings, and that the Supreme Court of Arizona in said mandamus

suit again stated that the bonds proposed to be refunded were callable, and directed the said loan commissioners to proceed with said refunding. That in said mandamus proceeding, the real issues upon which the callability of the bonds proposed to be redeemed depends were not called to the attention of the court; that among other things, the attention of the court was not called to the fact that said two bond issues had been ratified and approved by acts of the legislature of the state of Arizona after the form of the bonds had been approved and become matters of public record. Nor was it called to the attention of said Supreme Court that the provision of the statute under which said court stated that said bonds were callable ceased to be effective as to any indebtedness of the territory of Arizona, incurred after January 1st, 1897, and that after said date the legislature of the territory of Arizona authorized numerous bond issues with specific due dates, and expressly providing that they should be callable after certain dates, and that Chapter 2, Title 52, Revised Code of 1913 is a later enactment than the provision in Chapter 1 of said Title 52, under which said bonds are proposed to be refunded and that said Chapter 2, Title 52, as enacted by the legislature, expressly repealed all acts and parts of acts in conflict therewith, and that from the year 1897 to the year 1942, the fact had been recognized by the public officials of the state of Arizona and of the various counties, municipalities and school districts thereof, and by the legislative bodies of the municipalities, counties, and state of Arizona, that bonds issued in the territory and state of Arizona from the year 1937 to the year 1942, were not callable before their due dates, nor was it called to the attention of the

Supreme court of Arizona that Chapter 4 of Article 10 of Arizona Code Annotated, 1939, became effective in the Arizona Revised Code of 1928, as a new statute, and if the bonds in question were redeemable under the provisions of said act, the same constituted a law impairing the obligation of the contract entered into when the bonds were issued, and that the determination of this question rests finally in the jurisdiction of the federal courts.

XXVI.

That subsequently to the passage of the above resolution of said loan commissioners, and prior to the decision of the Supreme court of Arizona in the mandamus case last mentioned, two owners and holders of bonds owning and holding bonds of the two issues proposed to be redeemed in excess of the sum of \$325,000.00, filed their action in the United States District Court for the District of Arizona, for a declaration as to their right to receive interest on their said bonds until the due dates specified therein, and that thereafter, a citizen of the state of Arizona filed a further action in the United States District Court of Arizona, questioning the right of the State Treasurer, Governor and Secretary of State of the state of Arizona, to surrender bonds of said issues held by them in the state school fund of the state of Arizona. That said actions are pending in said United States District Court for the district of Arizona, and no answers therein have yet been filed by the defendants. That if it should be determined in said actions, or either of them, that the bonds proposed to be redeemed by the refunding issue proposed to be issued and sold by the defendants herein, and said refunding bonds should be issued and sold, the result will be that Maricopa county will have

outstanding a bond issue which to the extent that the bonds proposed to be refunded are not callable, will not be refunding bonds, but will be bonds creating an original indebtedness without the vote of the taxpayers of the county, in violation of the Constitution of the state of Arizona.

XXVII.

That the form of bond proposed to be issued by the defendants and sold upon the open market is set forth in Exhibit C, attached hereto and made a part hereof. That said proposed form of bond contains the following recital:

“It is hereby certified that the bonds of which this is one, are issued in full conformity with the constitution and laws of the state of Arizona, and particularly Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, and that all conditions, acts and things required by the constitution and laws of the state of Arizona to exist, occur and to be performed precedent to and in the issuance of this bond, exist, have occurred and have been performed.”

That said recital is not true. That it is a condition precedent in the issuance of said bonds that the redeemability of the bonds to be refunded has been determined. That such redeemability has not been determined by the proper courts, and that such redeemability is seriously questioned by the holders of some of said bonds, and is in very great doubt, and that if it should be finally determined that said bonds are not redeemable, the taxpayers of Maricopa county, of which the plaintiff is one, will be seriously prejudiced by the issuance of said bonds and the sale thereof to bona fide purchasers for value,

and that even if it should be held that said recital is not binding upon the county, the credit of the county and the interests of the taxpayers thereof will be seriously prejudiced by the issuance of such bonds containing recitals that are not true, to the prejudice of purchasers thereof in good faith and for value.

XXVIII.

That said bonds so proposed to be issued and sold by the defendants contained the following recital:

“And that said county or the treasurer thereof is required by law to pay to the state treasurer of the state of Arizona, on or before the first day of June of each year, the total amount so certified as aforesaid, whether or not the whole amount has been collected from the levy of taxes therefor.”

That said recital is incorrect and is not authorized by Article 4 of Chapter 10, Arizona Code Annotated, 1939, for the reason that the provision in Section 10-407 upon which said recital is based applies only to bonds issued by the loan commissioners for state indebtedness and does not apply to county, municipal and school district indebtedness which is governed by Section 10-409, and that said provision assumes to compel the county to pay the principal and interest on said bonds even though there be a deficiency in the amount collected from the taxes levied for that purpose, and binds the county to make good such deficiency from any funds it may have in its possession, thereby imposing an obligation upon the said county for the payment of the bonds proposed to be refunded, which is not now imposed on said county, was not approved by the taxpayers in voting upon the bonds proposed to be

refunded, and is in violation of the budget law of the state of Arizona, and that said recital, though not authorized by the statute, if said bonds are issued and sold to purchasers in good faith and for value, may bind said county to make such unauthorized payment to the prejudice of the taxpayers thereof.

XXIX.

That if the said Orrick, Dahlquist, Neff & Herrington should approve said bonds proposed to be issued, notwithstanding the pendency of the litigation questioning the redeemability of the bonds proposed to be refunded, and said bonds should be issued, and it should be held that such bonds are not redeemable, Maricopa County will have outstanding, in violation of the constitution of the state of Arizona, bonds to the extent that the bonds proposed to be refunded are not voluntarily surrendered, to the prejudice of the county and its taxpayers. That if the said Orrick, Dalquist, Neff & Herrington do not approve the legal validity of the said bonds proposed to be refunded until the final termination of said litigation in the federal courts, the result is that the option granted to the bidders by the resolution of the state loan commissioners above set forth, will continue in force until the termination of said litigation, and thereupon, if the said litigation determines that said bonds are callable the said bidders will demand delivery thereof if the market is favorable, and if the market be unfavorable, the said bidders will demand the delivery of said bonds more than five days before the termination of said litigation and thereby terminate the contract for purchase and receive back their bidder's check.

XXX.

That substantial damages will result to Maricopa county and its taxpayers if the illegal and void resolution of the state loan commissioners hereinabove set forth, is allowed to stand, for the reason that if the refunding bonds are delivered as provided in said resolution, the bidders will receive, in addition to their legitimate profit, the value of at least one-half per cent per annum interest on said \$4,100,000.00 of refunding bonds which, for the approximately six years average term of said bonds, will amount to at least \$125,000.00.

WHEREFORE, plaintiff prays that the contract proposed to be created between said bidders and said loan commissioners by the said resolution adopted the 10th day of February, 1943, be declared void and illegal, and that said defendants be enjoined from proceeding thereunder, and for such other and further relief as the court may deem proper.

GUST, ROSENFELD, DIVELBESS,
ROBINETTE AND COOLIDGE
201-11 Profesional Building, Phoenix, Arizona

By J. L. GUST,
Attorneys for Plaintiff.

EXHIBIT A

\$1000.00

UNITED STATES OF AMERICA
STATE OF ARIZONA

County of Maricopa
Highway Bond
Election of May 17, 1919

No.

No.

The County of Maricopa, State of Arizona, for value received, hereby acknowledges itself indebted

and promises to pay to the bearer hereof, on the 15th day of June A. D. 19....., the sum of One Thousand Dollars (\$1000.00) in gold coin of the United States, with interest hereon from date hereof in like gold coin at the rate of five and one-half per centum per annum, payable semi-annually on the 15th day of June and the 15th day of December of each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest aforesaid shall be payable at the office of the Treasurer of the County of Maricopa, State of Arizona.

This bond is one of a series of four thousand bonds of the same date and tenor, except as to maturity, numbered respectively from 1 to 4,000, inclusive, and amounting in the aggregate to four million dollars, (\$4,000,000.00).

This bond is issued by the Board of Supervisors of said County of Maricopa, for the purpose of constructing and improving public highways within and for the said County of Maricopa, pursuant to and in strict compliance with the Constitution of the State of Arizona, and the statutes thereof, including among others Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 31 of the Session Laws, Regular Session, 1917, and acts amendatory thereof and supplementary thereto, and in pursuance of a resolution of said Board of Supervisors duly adopted on the 31st day of March, 1919, and the report duly made by the Highway Commission for said county of Maricopa to said Board of Supervisors on the 10th day of April, 1919, and a resolution by said Board of Supervisors duly adopted upon receipt of said report and on said 10th day of April, 1919, and with the assent of a majority of the property taxpayers who were then qualified electors of said county voting at a special election legally called and duly held on the 17th day of May, 1919, for the purpose of determining whether the above-mentioned series of bonds should be issued.

It is hereby certified, recited and declared that all acts, conditions and things, required to be performed, to exist and to happen, precedent to and in the issuance of this bond, have been performed, have existed and have happened in due time, form and manner, as required by law, and that the bonded and other indebtedness of said county, including this bond and all other bonds of the above-mentioned series, does not exceed ten per centum of the taxable property of said county as shown by the last assessment roll thereof.

The full faith, credit and resources of the said county of Maricopa are hereby irrevocably pledged for the punctual payment of the principal and interest of this bond.

IN WITNESS WHEREOF the said County of Maricopa by its Board of Supervisors has caused this bond to be signed by the Chairman and attested by the Clerk of said Board of Supervisors and the seal of the said Board of Supervisors to be hereunto affixed this 15th day of June, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors
of the County of Maricopa, State of
Arizona.

ATTEST:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors
of the County of Maricopa, State of
Arizona.

2. That each of the said series of four thousand (4,000) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of twenty-seven dollars and fifty cents (\$27.50) each, and payable on the 15th day of June and the 15th day of December of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term

thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit:

THE COUNTY OF MARICOPA, STATE OF ARIZONA, hereby promises to pay to the holder hereof on the 15th day of _____, 19_____, at the office of the County Treasurer of the County of Maricopa, State of Arizona, twenty-seven dollars and fifty cents in gold coin of the United States, for the semi-annual interest on its highway bond numbered _____.

Election of May 17, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors
of Maricopa County, State of Arizona.

ATTEST:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors
of Maricopa County, State of Arizona.

\$27.50

Coupon No. _____

3. That the following form for registration shall be printed on the back of each of said bonds as many times as space will reasonably permit, to-wit:

This bond is registered pursuant to the statutes in such case made and provided in the name of _____, and the interest and principal thereof are hereby payable to such owner.

STATE AUDITOR.

EXHIBIT B

\$1000.00

UNITED STATES OF AMERICA
STATE OF ARIZONACounty of Maricopa
Highway Bond

No. Election of December 31, 1920 No.

The County of Maricopa, State of Arizona, for value received, hereby acknowledges itself indebted and promises to pay to the bearer hereof, on the 15th day of January, A. D., 19....., the sum of One Thousand Dollars (\$1000.00) in gold coin of the United States, with interest hereon from date hereof in like gold coin at the rate of six per centum per annum, payable semi-annually on the 15th day of January and the 15th day of July of each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest aforesaid shall be payable at the office of the Treasurer of the County of Maricopa, State of Arizona, or at in the City of New York.

This bond is one of a series of four thousand five hundred bonds of the same date and tenor except as to maturity, numbered respectively from four thousand one (4,0001) to eight thousand five hundred (8,500) inclusive, and amounting in the aggregate to Four Million Five Hundred Thousand Dollars \$4,500,000.00)

This bond is issued by the Board of Supervisors of said County of Maricopa, for the purpose of constructing and improving public highways within and for the said County of Maricopa, pursuant to and in strict compliance with the Constitution of the State of Arizona, and the statutes thereof, including among others Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 31 of the Session Laws of Arizona, Regular Session, 1917, and acts amendatory thereof and supplement-

ary thereto, and in pursuance of a resolution of said Board of Supervisors duly adopted on the 16th day of August, 1920, and the report duly made by the Highway Commission for said County of Maricopa to said Board of Supervisors on the 16th day of August, 1920 and a resolution by said Board of Supervisors duly adopted upon receipt of said report and on said 16th day of August, 1920, and with the assent of a majority of the property taxpayers who were then qualified electors of said county voting at a special election legally called and duly held on the 31st day of December, 1920, for the purpose of determining whether the above-mentioned series of bonds should be issued.

This bond is of the issue which was validated by Act of Legislature of State of Arizona in its Regular Session, 1921, by passage of Senate Bill No. 160, which was approved March 14th, 1921.

It is hereby certified, recited and declared that all acts, conditions and things, required to be performed, to exist and to happen, precedent to and in the issuance of this bond, have been performed, have existed and have happened in due time, form and manner as required by law, and that the bonded and other indebtedness of said county, including this bond and all other bonds of the above-mentioned series, does not exceed ten per centum of the taxable property of said county as shown by the last assessment roll thereof.

The full faith, credit and resources of the said County of Maricopa, are hereby irrevocably pledged for the punctual payment of the principal and interest of this bond.

IN WITNESS WHEREOF THE SAID County of Maricopa by its Board of Supervisors has caused this bond to be signed by the Chairman and attested by the Clerk of said Board of Supervisors, and the

seal of the said Board of Supervisors to be hereunto affixed this 15th day of January, 1921.

GUY F. VERNON
CHAIRMAN of the Board of Supervisors,
of the County of Maricopa, State of
Arizona.

ATTEST:

Clerk, of the Board of Supervisors,
of the County of Maricopa, State
of Arizona.

2. That each of the said series of four thousand five hundred (4,500) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Thirty Dollars (\$30.00) each, and payable on the 15th day of January and the 15th day of July of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit: (Except changes as to dates of payments):

“THE COUNTY OF MARICOPA, STATE OF ARIZONA, hereby promises to pay to the holder hereof on the 15th day of January, 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Thirty Dollars (\$30.00) in gold coin of the United States, for the semi-annual interest on its highway bond numbered

Election of December 31st, 1920.

Chairman of the Board of Supervisors
of Maricopa County, State of Arizona.”

ATTEST:

Clerk of the Board of Supervisors
of Maricopa County, State of Arizona.

\$30.00

Coupon Number.....

3. That the following form for registration shall be printed on the back of each of said bonds as many times as space will reasonably permit, to-wit:

-----19-----

This bond is registered pursuant to the statutes in such case made and provided and in the name of -----, and the interest and principal thereof are hereafter payable to such owner.

STATE AUDITOR.

EXHIBIT C

UNITED STATES OF AMERICA STATE OF ARIZONA

Refunding Bond

No. ----- \$1,000

The State of Arizona, for value received, hereby promises to pay to the bearer of this bond the principal sum of One Thousand (\$1,000) Dollars, on the 15th day of July, 19-----, together with interest at the rate of ----- (-----%) per centum per annum, payable semi-annually on the 15th day of January and the 15th day of July of each year from the date of and until the maturity of this bond upon the presentation and surrender of the attached coupons as they severally become due. Both principal and the interest on this bond are payable at the office of the Treasurer of the State of Arizona in the capitol building, at the City of Phoenix, Maricopa County, Arizona, in lawful money of the United States of America.

This bond is one of a series of Four Thousand One Hundred (4,100) refunding bonds authorized and issued by the State of Arizona pursuant to a demand made by the Board of Supervisors of Maricopa County, State of Arizona, upon the Loan Commissioners of the State of Arizona under the provisions of Article 4 of Chapter 10 of the Arizona Code,

Annotated, 1939, and all other laws of the State of Arizona thereto enabling, for the refunding of a like amount of valid outstanding bonded indebtedness of said Maricopa County, and is payable only from the moneys required to be paid to the State Treasurer of the State of Arizona by said Maricopa County under the provisions of Article 4 of Chapter 10 of the Arizona Code Annotated, 1939.

It is hereby certified that the bonds of which this is one are issued in full conformity with the Constitution and laws of the State of Arizona, and particularly Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, and that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, occur, and to be performed precedent to and in the issuance of this bond exist, have occurred and have been performed, and that under the provisions of Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, the State Board of Equalization of the State of Arizona, or on its failure, the State Auditor of the State of Arizona, shall determine the rate of tax to be levied annually on all the taxable property within said county to pay the principal and interest of this bond as they respectively become due and payable and shall certify the same to the board of Supervisors of said county and said Board of Supervisors shall enter such rate upon the assessment rolls of said county as other taxes and that if said county becomes delinquent in the payment of such taxes, said Board of Supervisors shall, before the next levy of taxes, prorate such delinquencies and make such additional levy, in addition to the current annual rate as may be certified to said Board of Supervisors by said State Board of Equalization, or said State Auditor, as may be necessary to pay the principal and interest of this bond and other bonds of this issue at their maturities and that said State Board of Equalization may reconvene said Board of Supervisors for the purpose of entering such rate or additional rate or levy or additional levy as said State Board of

Equalization, or said State Auditor, may certify, as aforesaid, and that said county, or the treasurer thereof, is required by law to pay to the State Treasurer of the State of Arizona, on or before the first day of June of each year, the total amount so certified, as aforesaid, whether or not the whole amount has been collected from the levy of taxes therefor.

For the punctual payment of this bond and the interest hereon, the faith and credit of the State of Arizona are hereby irrevocably pledged only to the extent that it will cause to be levied and collected taxes, as aforesaid, for the payment of the principal and interest of this bond and will pay such principal and interest out of the moneys derived from the collection of such taxes and paid to the State Treasurer of the State of Arizona.

IN WITNESS WHEREOF, the State of Arizona, acting by and through the Loan Commissioners of the State of Arizona, has caused this bond to be signed by the Loan Commissioners of the State of Arizona, countersigned by the State Treasurer of the State of Arizona, and have affixed hereto the Great Seal of the State of Arizona, and the seal of the State Treasurer of the State of Arizona, and has caused the coupons attached to this bond to bear the facsimile signature of the State Treasurer of the State of Arizona, all as of thisday of, 194.....

Governor.

State Auditor.

State Treasurer.

LOAN COMMISSIONERS
OF THE STATE OF ARIZONA

COUNTERSIGNED:

State Treasurer.

COUPON

No.

\$.....

On the day of, 19....,
 the State of Arizona will pay to the bearer, from
 moneys provided to be paid to the Treasurer of the
 State of Arizona for that purpose, the sum of
 (\$.....) Dollars, in lawful
 money of the United States of America, at the office
 of the Treasurer of the State of Arizona, at the City
 of Phoenix, Arizona, being the interest then due on
 its Refunding Bond dated, 19.....,
 and bearing No.

(FACSIMILE)

 State Treasurer.

(Certificate to be endorsed on the reverse
 side of each bond)

STATE OF)
 ARIZONA) ss.

I, the undersigned, State Auditor of the State of
 Arizona, do hereby certify that the within bond has
 been registered by me in the book kept for that
 purpose in the manner provided by law.

IN WITNESS WHEREOF, I have hereunto set
 my hand and affixed the official seal of my office
 this day of, 19.....

 State Auditor.

In The Superior Court
Of the State of Arizona in and for the County
of Maricopa

Filed: Walter S. Wilson, Clerk, 3:32.

By G. F. Ellsworth, Deputy, Apr. 27, 1943.

Filed: Lon Jordan, Sheriff Maricopa Co., Arizona
9:55 Apr. 24, 1943

No. 52042-Div. 1

SUMMONS

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; JOHN A. FOOTE, ED. OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County, JIM BRUSH, State Treasurer, SIDNEY P. OSBRON, Governor, and ANA FROHMILLER, State Auditor, Constituting the State Loan Commissioners of Arizona,
Defendants.

THE STATE OF ARIZONA to the above named defendants,

Boettcher and Company,
R. E. Moulton and Company,
Bank of America National Trust & Savings Association;
John A. Foote,
Ed. Oglesby and
Phil Isley, constituting the Board of Supervisors of Maricopa County,
Jim Brush, State Treasurer,
Sidney P. Osborn, Governor, and
Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona,

YOU ARE HEREBY SUMMONED and required to appear and defend in the above entitled

action in the above entitled court, within TWENTY DAYS, exclusive of the day of service, after service of this summons upon you if served within the State of Arizona, or within THIRTY DAYS, exclusive of the day of service, if served without the State of Arizona, and you are hereby notified that in case you fail so to do, judgment by default will be rendered against you for the relief demanded in the complaint.

The name and address of plaintiff's attorneys is Gust, Rosenfeld, Divelbess, Robinette & Coolidge, 201-11 Professional Building, Phoenix, Arizona.

GIVEN under my hand and the seal of the Superior Court of the State of Arizona in and for the County of Maricopa, this 24 day of April, 1943.

WALTER S. WILSON
Clerk.

By G. F. ELLSWORTH
(COURT SEAL) Deputy Clerk

STATE OF ARIZONA }
COUNTY OF MARICOPA } ss.

I HEREBY CERTIFY that I received the within Summons on the 24th day of April, A. D. 1943, at the hour of 9:55 A. M., and personally served the same on John A. Foote, Ed. Oglesby, Phil Isley, constituting the Board of Supervisors of Maricopa County, Jim Brush, State Treasurer, Sidney P. Osborn, Governor and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona, being the defendant named in said Summons, by delivering to John A. Foote, Ed. Oglesby, and Phil Isley, each in person, constituting the Board of Supervisors of Maricopa County, on the 24th day of April, 1943; Jim Brush, in person, as State Treasurer, Ana Frohmiller, in person, as State Auditor, both on April 24, 1943, and Sidney P. Osborn, in person, as Governor

of the State of Arizona, on the 26th day of April, the last three mentioned constituting the State Loan Commissioners of Arizona, County of Maricopa, a copy of said Summons, to which was attached a true copy of the complaint mentioned in said summons.

Dated this 26th day of April, A. D. 1943.

Fees, Service.....	\$9.00	LON JORDAN,
Copies	-----	Sheriff.
Travel, 2 miles.....	.60	
Publication	-----	By W. J. POPE,
Total	\$9.60	Deputy Sheriff.

In the Superior Court of the State of Arizona
In and for the County of Maricopa

Filed
WALTER S. WILSON, Clerk
10:25

By G. F. Ellsworth, Deputy
May 22, 1943

No. 52042—Div. 1

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County; JIM BRUSH, State Treasurer, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, constituting the State Loan Commissioners of Arizona,

Defendants.

ANSWER OF DEFENDANTS JOHN A. FOOTE, ED OGLESBY AND PHIL ISLEY, CONSTITUTING THE BOARD OF SU-

PERVISORS OF MARICOPA COUNTY;
JIM BRUSH, STATE TREASURER, SID-
NEY P. OSBORN, GOVERNOR, AND ANA
FROHMILLER, STATE AUDITOR, CON-
STITUTING THE STATE LOAN COMMIS-
SIONERS OF ARIZONA.

COME NOW the defendants John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona, and for answer to the complaint of plaintiff on file herein, for themselves alone, admit, allege and deny as follows:

FIRST DEFENSE

I.

The complaint fails to state a claim against these defendants upon which relief can be granted.

SECOND DEFENSE

1.

These defendants admit that plaintiff is a resident and real and personal property taxpayer of Maricopa County, Arizona, but deny that any of these defendants herein, or all of them, have performed, or will perform, an illegal contract to sell and circulate negotiable bonds to refund outstanding indebtedness of Maricopa County, and in this respect allege that outstanding Maricopa County Highway Bonds in the aggregate principal amount of \$4,100,000, as particularly described in the complaint herein, are subject to redemption, and will be refunded by the issuance of State of Arizona Refunding Bonds by the Loan Commissioners of the State of Arizona under and pursuant to the provisions of Chapter 1 of Title 52, Revised Statutes of Arizona, 1913, and under the decisions of the Supreme Court

of the State of Arizona in the cases of *Maricopa County vs. Osborn, et al*, 125 Pac. (2d) 703, and *Maricopa County vs. Osborn, et al*, 136 Pac. (2d) 270, Pacific Reporter Advance Sheets, May 14, 1943, Vol. 1, p. 270.

II.

These defendants admit the allegations of paragraphs II, III, IV, and V of plaintiff's complaint.

III.

For answer to paragraph VI of plaintiff's complaint, these defendants allege that notwithstanding the recitals contained in said bonds, or the coupons attached thereto, said bonds are redeemable prior to their maturity dates as provided by Chapter I, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona construing said chapter, as aforesaid.

IV.

These defendants admit the allegations of paragraphs VII, VIII, and IX. For answer to paragraph X of plaintiff's complaint, the defendants admit the enactment of Chapter 54, Session Laws of 1941, which validated Maricopa County Highway Bonds as therein provided, but deny that said chapter had the effect of prohibiting, or was intended to prohibit, the refunding of said bonds as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the Supreme Court of Arizona, as aforesaid.

V.

For answer to paragraph XI of plaintiff's complaint, these defendants admit that said Maricopa County Highway Bonds were sold in the open market to various purchasers thereof, but these defendants allege that notwithstanding the purchase of said bonds, as in said paragraph alleged, said bonds

are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona construing said chapter, as aforesaid.

VI.

These defendants admit the allegations of paragraphs XII, XIII, and XIV of plaintiff's complaint.

VII.

For answer to paragraph XV of plaintiff's complaint, these defendants allege that notwithstanding the recitals contained in said bonds, or the coupons attached thereto, said bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona, as aforesaid.

VIII.

These defendants admit the allegations of paragraph XVI of plaintiff's complaint.

IX.

For answer to paragraph XVII of plaintiff's complaint, these defendants admit the allegations thereof, except these defendants allege that notwithstanding the maturity dates as provided in said bonds by the Board of Supervisors of Maricopa County, that said bonds are refundable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of the State of Arizona construing said chapter, as aforesaid.

X.

These defendants admit the allegations of Paragraph XVIII of plaintiff's complaint, but deny that Chapter 86 of the Session Laws of 1921, which vali-

dated said bonds had the effect of prohibiting, or was intended to prohibit, the refunding of said bonds as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the Supreme Court of the State of Arizona, as aforesaid.

XI.

For answer to paragraph XIX of plaintiff's complaint these defendants admit that said Maricopa County Highway Bonds were sold in the open market to various purchasers thereof, but these defendants allege that notwithstanding the purchase of said bonds, as in said paragraph alleged, said bonds are redeemable prior to their maturity dates as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, and the decisions of the Supreme Court of Arizona, as aforesaid.

XII.

For answer to paragraph XX of plaintiff's complaint, these defendants admit that Maricopa County levied and collected taxes to retire the principal and interest of the Maricopa County Highway Bonds therein described as the same became due and payable, and further admit that in the year 1942, the Board of Supervisors of Maricopa County adopted a resolution demanding that the Loan Commissioners of the State of Arizona issue refunding bonds for the purpose of refunding said Maricopa County Highway Bonds then outstanding, and further admit that Maricopa County brought an original proceeding in mandamus in the Supreme Court of the State of Arizona to compel the Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds, and admit that the Supreme Court of the State of Arizona, in said proceeding, entered judgment commanding the Loan Commissioners of the State of Arizona to refund said outstanding Maricopa County Highway Bonds, but deny that the Supreme Court

of the State of Arizona held that said Maricopa County Highway Bonds were refundable under the provisions of Article 4 of Title 10, Arizona Code Annotated, 1939, but in this respect allege that both of the decisions of the Supreme Court of the State of Arizona, as aforesaid, held that said Maricopa County Highway Bonds were refundable under the provisions of Chapter 1, Title 52, Revised Statutes of Arizona, 1913. That J. L. Gust, plaintiff in this cause of action, appeared in said mandamus proceeding in the Supreme Court of the State of Arizona as counsel for the owner and holder of some of said Maricopa County Highway Bonds and while ostensibly appearing in said mandamus proceeding as a friend of the court, nevertheless in fact represented said bondholder, and in said mandamus proceeding was entitled to, and could have presented and raised, all the issues the said J. L. Gust now raises as plaintiff herein. That a copy of the brief filed in the Supreme Court of the State of Arizona in said original mandamus proceeding by the said J. L. Gust, as attorney for said bondholder, is attached to the affidavit of Leslie C. Hardy filed herein contemporaneously with this answer and marked "Exhibit C", and by reference herein incorporated as if made a part hereof. These defendants deny each and every remaining allegation in said paragraph XX of plaintiff's complaint.

XIII.

For answer to paragraph XXI of plaintiff's complaint, these defendants admit that subsequent to the decision of the Supreme Court of the State of Arizona in the first mandamus proceeding filed in that court, the Board of Supervisors of Maricopa County again demanded that the Loan Commissioners of the State of Arizona proceed with the refunding of said outstanding Maricopa County Highway Bonds, and further admit that said Loan Commissioners thereafter adopted a resolution calling for

bids for State of Arizona Refunding Bonds to refund said Maricopa County Highway Bonds then issued and outstanding. Defendants deny each and every remaining allegation contained in paragraph XXI of plaintiff's complaint.

XIV

For answer to paragraph XXII of plaintiff's complaint these defendants admit the Boettcher and Company, R. E. Moulton and Company, and Bank of America National Trust and Savings Association, submitted their joint bid for the purchase of said Refunding Bonds in the words and figures as set forth in said paragraph XXII of plaintiff's complaint, and admit that said bid was the only bid received and provided that said bidders thereby agreed to purchase said State of Arizona Refunding Bonds to bear interest at the rate of $2\frac{3}{4}\%$ per annum. These defendants deny each and every remaining allegation contained in paragraph XXII of plaintiff's complaint.

XV.

These defendants admit the allegations of paragraph XXIII of plaintiff's complaint.

XVI.

For answer to paragraph XXIV of plaintiff's complaint, these defendants deny that the resolution of the Loan Commissioners of the State of Arizona, as set forth in paragraph XXIII of plaintiff's complaint, and as referred to in paragraph XXIV of plaintiff's complaint, is beyond the power of said Loan Commissioners to adopt, and further deny that said resolution is illegal and void. These defendants further deny that said resolution of said Loan Commissioners grants an option to the said bidders to purchase said State of Arizona Refunding Bonds, but admit that one of the conditions in said bid provides that the validity of said refunding bonds shall

be approved by the attorneys therein named. These defendants deny each and every remaining allegation contained in paragraph XXIV of plaintiff's complaint.

XVII.

For answer to paragraph XXV of plaintiff's complaint, these defendants admit that Maricopa County filed a second original proceeding in mandamus in the Supreme Court of the State of Arizona against the Loan Commisisoners of the State of Arizona to require said Loan Commissioners to proceed with the refunding of said Maricopa County Highway Bonds, and allege that the Supreme Court of Arizona in said proceeding again commanded said Loan Commissioners to refund said Maricopa County Highway Bonds, but deny that such action was brought under the direction of the attorneys named in said paragraph XXV of the complaint. These defendants admit that in said mandamus proceeding the only parties thereto were Maricopa County and the Loan Commissioners of the State of Arizona. These defendants admit the allegations of said paragraph XXV of plaintiff's complaint insofar as they assert the existence of the statutes of the State of Arizona therein referred to. Defendants deny each and every remaining allegation contained in said paragraph XXV of plaintiff's complaint, and in this respect these defendants allege that said Maricopa County Highway Bonds referred to therein were at all times, and are now, subject to redemption as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the decision of the Supreme Court of the State of Arizona, as aforesaid.

XVIII.

For answer to paragraph XXVI of plaintiff's complaint, these defendants allege that the allegations thereof are wholly immaterial, and in this respect further allege that the proceedings in the

United States District Court for the District of Arizona therein referred to do not control the proceedings and judgment in this court, and in this respect these defendants allege that the Supreme Court of the State of Arizona, by its decisions herein referred to, commanding the refunding of said outstanding Maricopa County Highway Bonds by the Loan Commissioners of the State of Arizona, is the rule of decision to be followed by this court.

XIX.

For answer to paragraph XXVII of the plaintiff's complaint, these defendants admit the recitals contained in the form of said refunding bond as alleged in said paragraph of plaintiff's complaint. These defendants deny each and every remaining allegation in said paragraph contained.

XX.

These defendants admit the recitals contained in the form of said refunding bond as set forth in paragraph XXVIII of plaintiff's complaint. These defendants deny each and every remaining allegation therein contained, and in this respect allege that said Maricopa County Highway Bonds are redeemable as provided by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the decisions of the Supreme Court of the State of Arizona, as aforesaid.

XXI.

These defendants deny the allegations of paragraph XXIX of plaintiff's complaint.

XXII.

For answer to paragraph XXX of plaintiff's complaint, these defendants deny that said resolution adopted by the Loan Commissioners of the State of

Arizona is illegal and void. These defendants allege that the adoption of said resolution by the Loan Commissioners of the State of Arizona, and the sale and delivery of the State of Arizona Refunding Bonds as therein provided for, is authorized by Chapter 1, Title 52, Revised Statutes of Arizona, 1913, as construed by the decisions of the Supreme Court of the State of Arizona, as aforesaid.

THIRD DEFENSE

These defendants allege that the cause of action set forth in the plaintiff's complaint is barred by the decisions of the Supreme Court of the State of Arizona, as aforesaid, commanding the Loan Commissioners of the State of Arizona to refund said Maricopa County Highway Bonds, and that said decisions are *res adjudicata* of said cause of action, and are the rule of decision to be followed by this court.

FOURTH DEFENSE

These defendants allege that plaintiff herein has instituted this suit for the purpose of harrassing these defendants, and each of them, and for the purpose of delaying, impeding, hindering, and obstructing these defendants from carrying out and complying with the peremptory writs of mandamus issued out of the Supreme Court of the State of Arizona, as aforesaid, and that the maintenance of this suit by plaintiff constitutes *vaxatious* litigation.

WHEREFORE these defendants pray that plaintiff be denied the relief prayed for by the complaint herein, and that said complaint be dismissed; for such other and further relief as may be meet and

proper in the premises; and for their costs herein expended.

HAROLD R. SCOVILLE
Maricopa County Attorney.

LESLIE C. HARDY
Special Counsel for Maricopa County.

ATTORNEYS FOR THE DEFENDANTS
WHO ARE OFFICIALS OF MARICOPA
COUNTY, ARIZONA.

JOE CONWAY
Attorney General

EARL ANDERSON
Chief Assistant Attorney General.

ATTORNEYS FOR THE DEFENDANTS
WHO ARE OFFICIALS OF THE STATE
OF ARIZONA.

In the Superior Court of the State of Arizona
In and for the County of Maricopa

Filed
WALTER S. WILSON, Clerk
10:25

By G. F. Ellsworth, Deputy
May 22, 1943

No. 52042—Div. 1

MOTION FOR SUMMARY JUDGMENT
UNDER SECTION 21-1211, ARIZONA
CODE ANNOTATED, 1939

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIA-

TION; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County; JIM BRUSH, State TREASURER, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, constituting the State Loan Commissioners of Arizona,

Defendants.

Defendants John A. Foote, Ed Oglesby, and Phil Isley, constituting the Board of Supervisors of Maricopa County; Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona, move the court as follows:

1. For summary judgment as to the whole of the claim asserted by plaintiff, J. L. Gust.

2. For summary judgment that the judgments of the Supreme Court of the State of Arizona in the two cases entitled *Maricopa County v. Osborn*, Ariz....., 125 Pac. (2d) 703, and *Maricopa County v. Osborn*, Ariz....., 136 Pac. (2d) 270, decided April 12, 1943, respectively, are binding on plaintiff and are *res judicata* as to the matters therein adjudicated and as to all matters herein raised in any way affecting the rights of Maricopa County to call the outstanding Maricopa County Highway Bonds for redemption prior to their respective maturity dates and of the right and authority of the Loan Commissioners of the State of Arizona to issue State of Arizona Refunding Bonds for the purpose of providing moneys for such redemption.

3. For summary judgment that the outstanding Maricopa County Highway Bonds are subject to redemption prior to their fixed maturity dates under the laws of the State of Arizona by and through the issuance of State of Arizona Refunding Bonds, by the Loan Commissioners of the State of Arizona.

4. For summary judgment that the contract of sale of said State of Arizona Refunding Bonds as set forth in the resolution of the Loan Commissioners of the State of Arizona, adopted under date of February 10, 1943, be adjudged to be a valid, legal and binding contract.

5. For summary judgment that defendants have and recover their costs herein incurred.

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa County.

ATTORNEYS FOR THE DEFENDANTS
WHO ARE OFFICIALS OF MARICOPA
COUNTY, ARIZONA.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General.

ATTORNEYS FOR THE DEFENDANTS
WHO ARE OFFICIALS OF THE STATE
OF ARIZONA.

In the Superior Court of the State of Arizona
In and for the County of Maricopa

Filed
WALTER S. WILSON, Clerk
10:25

By G. F. Ellsworth, Deputy
May 22, 1943

No. 52042—Div. 1

NOTICE OF MOTION FOR SUMMARY
JUDGMENT

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County; Jim Brush, State Treasurer, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, constituting the State Loan Commissioners of Arizona.

Defendants.

TO: MESSRS. GUST, ROSENFELD, DIVELBESS, ROBINETTE, & COOLIDGE, attorneys for plaintiff herein;

PLEASE TAKE NOTICE, that on the 3rd day of June, 1943, at the hour of 10:00 A. M., or as soon thereafter as counsel can be heard, the undersigned attorneys for the defendants John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona, will appear before

the Judge of the above entitled court, and move that summary judgment be entered herein in accordance with Section 21-1211, Arizona Code Annotated, 1939.

In support of said Motion for Summary Judgment the undersigned counsel for the defendants above named will file with the Clerk of the above entitled court, as constituting a part of the record herein, the following:

1. Motion for Summary Judgment Under Section 21-1211, Arizona Code Annotated, 1939.

2. Affidavit in Support of Motion for Summary Judgment, executed by Earl Anderson.

3. Affidavit in Support of Motion for Summary Judgment, executed by Leslie C. Hardy.

4. Answer of Defendants John A. Foote, Ed Oglesby, and Phil Isley, constituting the Board of Supervisors of Maricopa County, Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona.

5. Memorandum of Points and Authorities in Support of Motion for Summary Judgment.

Copies of each and all of the foregoing enumerated documents are herewith served upon you as counsel for plaintiff herein.

At the time indicated, as aforesaid, the documents above enumerated, together with the complaint on file herein, and such other parts of the record herein as may be appropriate thereto, will be presented to the Judge of the above entitled Court for his con-

sideration in disposing of said Motion for Summary Judgment.

DATED this 22nd day of May, 1943.

HAROLD R. SCOVILLE
Maricopa County Attorney

LESLIE C. HARDY
Special Counsel for Maricopa County

ATTORNEYS FOR THE DEFENDANTS
WHO ARE OFFICIALS OF MARICOPA
COUNTY, ARIZONA

JOE CONWAY
Attorney General

EARL ANDERSON
Chief Assistant Attorney General

ATTORNEYS FOR THE DEFENDANTS
WHO ARE OFFICIALS OF THE STATE
OF ARIZONA.

On this 22 day of May, 1943, the undersigned counsel for the plaintiff herein, do hereby admit service of copies of the foregoing notice of motion for summary judgment, together with the documents enumerated therein and numbered from one to five inclusive.

GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE

By J. L. GUST, (F.),
Attorneys for the Plaintiff.

In the Superior Court of the State of Arizona
In and for the County of Maricopa

Filed
WALTER S. WILSON, Clerk
10:47

By G. F. Ellsworth, Deputy
June 21, 1943

No. 52042—Div. 1

SUMMARY JUDGMENT IN FAVOR OF
DEFENDANTS NAMED

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON AND COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County; JIM BRUSH, State Treasurer, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, constituting the State Loan Commissioners of Arizona,
Defendants.

The defendants John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona, having moved for summary judgment pursuant to Section 21-1211, Arizona Code Annotated, 1939, and the motion for summary judgment having been argued to the Court on June 3, 1943 by counsel for the plaintiffs and defendants named herein, whereupon the said motion for summary judgment was submitted to the court for decision, and the court, being advised of the law, on June 18, 1943 ordered that said motion for summary judgment be granted in favor of said defendants:

NOW, THEREFORE, in consideration of the premises,

IT IS ORDERED, ADJURED AND DECREED, and the Court does hereby ORDER, ADJUDGE AND DECREE, that defendants John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, and each of them, have summary judgment in their favor against plaintiff herein.

DATED THIS 21st day of June, 1943.

M. T. PHELPS
Judge

APPROVED AS TO FORM:

GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE

By J. L. Gust
Attorneys for Plaintiff.

MINUTE ENTRIES

In the Superior Court of Maricopa County,
State of Arizona

Division No. 1

Court convened at 9:30 A. M. Thursday, June 3, 1943. Present: M. T. Phelps, Judge; Walter S. Wilson, Clerk; The Sheriff; the County Attorney; and the Court Reporter.

No. 52042

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, et al,

Defendants.

Comes now the Plaintiff by counsel, Gust, Rosenfeld, Divelbess, Robinette & Coolidge, by J. L. Gust,

and the Defendants are represented by counsel Harold R. Scoville, by Leslie C. Hardy, Special Counsel for Maricopa County; Joe Conway appearing for the State of Arizona, by his Deputy, Earl Anderson.

At 10:00 A. M. Hearing is had on the Defendants' Motion for Summary Judgment, and the matter is argued by counsel for Defendants.

At 11:20 A. M. Court takes five minutes recess, and at 11:25 A. M. Court resumes.

The matter is further argued by counsel for the Plaintiff, at the conclusion of which, the Court being not fully advised in the premises,

It is ordered the Defendants' Motion for Summary Judgment is taken under advisement.

In the Superior Court of Maricopa County,
State of Arizona

Division No. 1

Court convened at 9:30 A. M. Friday, June 18, 1943. Present: M. T. Phleps, Judge; Walter S. Wilson, Clerk; The Sheriff; the County Attorney; and the Court Reporter.

No. 52042

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, et al,

Defendants.

This matter having been under advisement, it is ordered by the Court that the Motion for Summary Judgment for the Defendants is granted.

In the Superior Court of the State of Arizona
In and for the County of Maricopa

No. 52042—Div. 1

CLERK'S CERTIFICATE

J. L. GUST,

Plaintiff,

vs.

BOETTCHER AND COMPANY, R. E. MOULTON and COMPANY, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION; JOHN A. FOOTE, ED OGLESBY and PHIL ISLEY, constituting the Board of Supervisors of Maricopa County; JIM BRUSH, State Treasurer, SIDNEY P. OSBORN, Governor, and ANA FROHMILLER, State Auditor, constituting the State Loan Commissioners of Arizona,

Defendants.

STATE OF ARIZONA,)
County of Maricopa.)ss.

I, WALTER S. WILSON, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa, do hereby certify that the foregoing pleadings and records, to-wit:

1. Complaint to Restrain Delivery of Bonds;
2. Summons;

3. Answer of Defendants John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County; Jim Brush, State Treasurer, Sidney P. Osborn, Governor, and Ana Frohmiller, State Auditor, constituting the State Loan Commissioners of Arizona.

4. Motion for Summary Judgment under Section 21-1211, Arizona Code Annotated, 1939;

5. Notice of Motion for Summary Judgment;

6. Summary Judgment in Favor of Defendants Named;

7. All Minute Entries;

are a full, true and complete copy and transcript thereof as they were filed and remain of record in the above entitled and numbered cause in my office as the Clerk of the Superior Court of the State of Arizona in and for the County of Maricopa.

I DO FURTHER CERTIFY that plaintiff in this cause of action has not, as of the time of the execution of this Certificate, filed with the undersigned, as the Clerk of said court, a Notice of Appeal from the Summary Judgment in Favor of the Defendants Named dated and filed herein on the 21st day of June, 1943.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at the City of Phoenix, in said County and State, thisday of October, 1943.

WALTER S. WILSON, Clerk of the
Superior Court of the State of Arizona
in and for the County of Maricopa.

(Court Seal)

By G. F. ELLSWORTH,
Deputy.